

PROTEST

PROTEST FEE PAID

\$15.00 18-01638

Fee Rec'd BY: ONLINE

April 5, 2018

Protestant: Colorado River District Colorado River Water Conservation District
c/o John Currier, Chief Engineer
P.O. Box 1120
Glenwood Springs, CO 81602

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WATER RIGHTS

ONLINE

RE: Protest of Water Right Application 41-3747

The Colorado River District's Protest of Water Right 41-3747 (Application A81080) is being submitted electronically via email to waterrights@utah.gov

John Currier, Chief Engineer

SCANNED



April 5, 2018

Submitted via email: waterrights@utah.gov

To: Mr. Kent Jones, Utah State Engineer, Utah Department of Natural Resources,
Division of Water Rights

Protestant: Colorado River Water Conservation District
P.O. Box 1120
Glenwood Springs, CO 81602-1120

Re: Protest of Water Right 41-3747, Water Horse Resources, LLC (Application
A81080)

The Colorado River Water Conservation District ("Colorado River District") hereby respectfully submits this protest to the application of Water Horse Resources, LLC (A81080, 41-3747). The Colorado River District is a political subdivision of the State of Colorado, formed by the Colorado Legislature (*See* C.R.S. § 37-46-101, *et seq.*) in 1937 for the purpose of safeguarding for the State of Colorado the beneficial consumptive use within Colorado of that portion of the waters of the Colorado River apportioned to the state by interstate compact, and for promoting the welfare of the inhabitants of the Colorado River District. Geographically, the Colorado River District encompasses an area of approximately 29,000 square miles, including all of twelve and parts of three western Colorado counties. Included in that area are the headwaters and tributaries of the Colorado River mainstem and its principal tributaries, the Gunnison, the White and the Yampa Rivers (as well as the portion of the Green River as it curves into and out of Colorado).

The applicant, Water Horse Resources, LLC, is managed, owned, and/or controlled in whole or in part by Mr. Aaron Million. Mr. Million has previously attempted to secure personal profit by moving water from one state in the Upper Colorado River Basin to the Colorado Front Range. Mr. Million's Wyco Power and Water, Inc. proposed the Flaming Gorge Regional Watershed Supply Project which would have pumped water more than 500 hundred miles from Flaming Gorge Reservoir or a point upstream on the Green River in Wyoming to Colorado's Front Range. The application of Water Horse Resources for a State of Utah water right has similar problems as the Wyco Power and Water, Inc. proposal, and should be rejected for essentially the same reasons as Mr. Million's previous proposals.

The Colorado River District provides the following initial objections to the application.

1. The application is speculative. A fundamental precept of water use in Colorado (and, we believe, in Utah as well) is a strict prohibition on speculative claims of water. No specific beneficial use or need has been identified for the project other than a general reference to future water demands in Colorado. The Water Horse Resources application would not

201 Centennial Street / PO Box 1120 • Glenwood Springs, CO 81602
(970) 945-8522 • (970) 945-8799 Fax
www.ColoradoRiverDistrict.org

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survive any objection based on speculation in the Colorado water court process. Thus, no Utah water right should be awarded for the project unless and until Water Horse Resources has obtained a Colorado water right, adjudicated in a Colorado water court that establishes specific beneficial uses, and a firm contractual commitment by end-users for the full amount of water claimed.

2. The application requests a large volume of water to move from the Green River for consumptive uses on Colorado's Front Range. The application states that the claimed water would be diverted pursuant to a State of Utah water right permit but accounted as part of Colorado's allocation under the Upper Colorado River Compact, which raises numerous legal and practical water accounting issues. Importantly, the application claims that the proposed Utah water right would establish a priority that would be enforceable as against other water users within the State of Colorado. No legal mechanism or agreement currently exists to establish a priority in one state that would be enforceable within the other state. In addition, no agreement exists to guide the complicated water accounting necessary to track the project's diversion in Utah for use within Colorado. Thus, the application could adversely impact water users in both Colorado and Utah. No water right should be awarded unless and until the Upper Colorado River Commission has formally adopted procedures on how such a right would be administered and accounted.
3. The proposed application would adversely impact the ability of the Colorado River District, the State of Colorado, and other public entities charged with the development and conservation of Colorado's compact entitlement to plan for the coordinated development of Colorado's remaining compact entitlement in a responsibly conservative manner. The application would therefore be detrimental to the public welfare. We concur with the argument made by the Utah Board of Water Resources and Division of Water Resources in their April 3, 2018 protest in this matter that the application should be denied because it lacks support from any of the three governmental entities within Colorado (the Colorado Water Conservation Board, the Colorado River District, and the Southwestern Water Conservation District) that have statutory duties regarding the conservation and development of the State's Colorado River compact allocation.
4. The large volume of water claimed would adversely impact existing users of Colorado's entitlement to the waters of the Colorado River, and could usurp the remainder of the state's compact allocation. The State of Colorado and its sister states within the Upper Basin, including Utah, are actively studying and conducting projects to reduce existing consumptive uses of water within the Upper Basin in order to avoid the potential chaos and hardship that would be triggered by administration under the 1922 Colorado River Compact or by water levels at Lake Powell dropping to critically low levels. The proposed water right would exacerbate the supply problems currently faced in the Colorado River Basin, and would increase the need and cost of any Upper Basin demand management program. The proposed water right thus would be counter-productive to the actions of the Upper Division States by requiring that additional existing beneficial uses of water within the Upper Basin be eliminated, simply so that a water supply would be available for Water

Horse Resources speculative application. No water right should be awarded unless the applicant can prove that the claimed use will not adversely impact existing water uses in the Upper Basin, and that the application would not be detrimental to the public welfare.

5. The application does not provide any supporting information to demonstrate the economic feasibility of the project, or that the applicant has the economic ability to complete the proposed project works. No water right should be awarded unless and until the applicant can demonstrate that the proposed project is economically feasible, and can and will be developed within the applicant's financial ability, for non-speculative beneficial uses.
6. No environmental analysis has been completed or even initiated for the proposed project. Such an enormous project almost certainly would face formidable hurdles in obtaining the national, state, and local permits required for construction and operation of the diversion structure, pumping plants, pipeline, power-plants, and any associated storage or forebay reservoir structures. No water right should be granted unless and until the applicant can demonstrate that it has or will be able to acquire the necessary permits and governmental authorizations.
7. The Colorado River District and its constituents support, and benefit from, the Upper Colorado River Endangered Fish Species Recovery Program. Reservoir releases from Flaming Gorge Reservoir and associated flows in the Green River below the reservoir play an important part in the success of the Recovery Program. If granted, the application could adversely impact flows in the Green River to the detriment of the Recovery Program, and the associated detriment of virtually every Upper Colorado River Basin water user. No water right should be granted unless and until the applicant has demonstrated that the proposed project will not adversely impact the Upper Colorado River Recovery Program.
8. The Colorado Water Plan establishes a seven-principle "Conceptual Framework" for the development of any new supply from the Colorado River basin for transmountain use on Colorado's Front Range. The Colorado Water Plan's framework includes principles that would require (1) the project proponent and end-users accept the hydrologic risk of water availability, (2) conjunctive use with other non-Colorado River Basin supplies, (3) the establishment of hydrologic, river, and storage triggers as conditions for when a new transmountain diversion project, such as Water Horse Resources' proposal, would be able to divert; (4) the establishment of a collaborative program that protects against involuntary curtailment for existing uses and some reasonable increment of future development in the Colorado River System but would not cover a new transmountain application such as the subject application, (5) the accommodation of water needs on Colorado's West Slope as part of the project, (6) conservation and reuse commitments, and (7) environmental resiliency and recreational uses. The Colorado Water Plan's Conceptual Framework can be found at the following link:
<http://cwcbweblink.state.co.us/WebLink/ElectronicFile.aspx?docid=199506&searchid=80d50cb3-95bf-405c-bfa5-587c633c7136&dbid=0> . The applicant has not demonstrated,

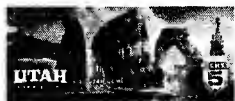
that it can operate its project in compliance with the Colorado Water Plan's Conceptual Framework.

9. For the reasons specified above, the application does not satisfy the requirements to obtain a water right within the State of Colorado, and also would fail to meet the requirements set forth at Utah Code 73-1-1(3), 73-1-3, 73-3-8, and the corresponding provisions of Utah's export statute.
10. The application is vague and lacks sufficient detail to form the basis of a recognized water right, particularly given the large volume of water claimed and the complex legal and accounting problems raised by the application. The application should be denied on this basis alone. However, if it is not summarily rejected, the Colorado River District reserves the right to raise additional objections to the application as more information may be provided by the applicant or others.
11. The Colorado River District does not specifically request a hearing in this matter. However, if a hearing is held, we request the opportunity to present objections and information at the hearing.

Respectfully submitted this 5th day of April, 2018.



John M. Currier, Chief Engineer
Colorado River Water Conservation District

**waterrights DNR <waterrights@utah.gov>**

**CRWCD Protest of Water Right 41-3747 (Application A81080) -
Official Receipt No. 18-01638**

3 messages

Lorra Nichols <lnichols@crwcd.org>
To: "waterrights@utah.gov" <waterrights@utah.gov>
Cc: John Currier <jcurrier@crwcd.org>

Thu, Apr 5, 2018 at 3:51 PM

On behalf of John Currier, Chief Engineer for the Colorado River Water Conservation District, attached please find the Colorado River District's Protest of Water Right 41-3747.

Lorra Nichols | Paralegal

201 Centennial Street | PO Box 1120

Glenwood Springs, CO 81602

T: 970.945.8522, ext. 222 | F: 970.945.8799

lnichols@crwcd.org | www.ColoradoRiverDistrict.org



 **CRWCD Protest to 41-3747.pdf**
214K

waterrights DNR <waterrights@utah.gov>
To: Dora Collier <dcollier@utah.gov>

Thu, Apr 5, 2018 at 4:27 PM

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 **CRWCD Protest to 41-3747.pdf**
214K

Dora Collier <dcollier@utah.gov>
To: waterrights DNR <waterrights@utah.gov>

Thu, Apr 5, 2018 at 4:54 PM

I believe that this was sent to me in error.

Thanks, Dora

[Quoted text hidden]

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Dora Collier

HR Analyst

UT Dept of Public Safety

801-965-4787